

REMARKS

This is a full and timely response to the non-final Office Action of August 23, 2006. Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this Third Response, claims 1-26, 28-48, 52, and 53-57 are pending in this application. Claims 1, 4, 18, 21, 34, 45, 46, 52, and 53 are directly amended herein. Further, claims 54-57 are newly added. It is believed that the foregoing amendments add no new matter to the present application.

Response to §102 Rejections

A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. See, e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

Claim 1

Claim 1 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Johnson* (U.S. Patent No. 7,050,215). Claim 1, as amended, reads as follows:

1. A spectral correlator, comprising:
a specimen; and
an optical device configured to collect light from the specimen, ***the optical device having a wavelength spreading element configured to disperse, based on wavelength, a received first spectra of the light collected from the specimen***, the optical device configured to optically determine a similarity of the dispersed first spectra and a second known spectra by directly comparing the dispersed first spectra to a representation of the second known spectra. (Emphasis added).

Applicant respectfully asserts that *Johnson* fails to disclose at least the features of claim 1 highlighted above. Accordingly, the 35 U.S.C. §102 rejection of claim 1, as amended, is improper.

In this regard, *Johnson* discloses a correlation filter 408. However, there is nothing in *Johnson* to indicate that the correlation filter 408 filters light that has been "dispersed" by a "wavelength spreading element." Accordingly, *Johnson* fails to disclose "the optical device having a wavelength spreading element configured to disperse, based on wavelength, a received from spectra of the light collected from the specimen," as recited by claim 1.

For at least the above reasons, Applicant respectfully asserts that *Johnson* fails to disclose each feature of claim 1, and the 35 U.S.C. §102 rejection of claim 1 should be withdrawn.

Claims 2, 3, 54, and 55

Claims 2 and 3 presently stand rejected in the Office Action under 35 U.S.C. §102 as allegedly being anticipated by *Johnson*. Further, claims 54 and 55 have been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 2, 3, 54, and 55 contain all features of their respective independent claim 1. Since claim 1 should be allowed, as argued hereinabove, pending dependent claims 2, 3, 54, and 55 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Claim 18

Claim 18 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Johnson*. Claim 18, as amended, reads as follows:

18. A spectral correlator, comprising:
a specimen;
an illuminating device configured to illuminate the specimen; and
an optical device configured to filter light from the specimen using a spatial filter indicative of a known spectra and to determine, based on the filtered light, a similarity of a received spectra defined by the light and the known spectra, ***the optical device having a wavelength spreading element configured to disperse the spectra, the filter configured to receive the dispersed spectra.*** (Emphasis added).

Applicant respectfully asserts that *Johnson* fails to disclose at least the features of claim 18 highlighted above. Accordingly, the 35 U.S.C. §102 rejection of claim 18, as amended, is improper.

In this regard, *Johnson* discloses a correlation filter 408. However, there is nothing in *Johnson* to indicate that the correlation filter 408 is a "spatial filter" that filters light "dispersed" by a "wavelength spreading element." Accordingly, *Johnson* fails to disclose "the optical device having a wavelength spreading element configured to disperse the spectra" and a "spatial filter" that receives the "dispersed spectra," as recited by claim 18.

For at least the above reasons, Applicant respectfully asserts that *Johnson* fails to disclose each feature of claim 18, and the 35 U.S.C. §102 rejection of claim 18 should be withdrawn.

Claims 19, 20, and 56

Claims 19 and 20 presently stand rejected in the Office Action under 35 U.S.C. §102 as allegedly being anticipated by *Johnson*. Further, claim 56 has been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 19, 20, and 56 contain all features of their respective independent claim 18. Since claim 18 should be allowed, as argued hereinabove, pending dependent claims 19, 20, and 56 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Claim 34

Claim 34 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Johnson*. Claim 34, as amended, reads as follows:

34. A spectral correlator, comprising:
a specimen;
means for receiving light reflected off and/or emitted by the specimen;
means for separating the light into its component colors; and
means for optically correlating the separated light to determine a similarity of the separated light and a second known spectra, the correlating means having an optical filter for filtering the separated light, the optical filter indicative of the second known spectra such that the filtered light has an intensity indicative of the degree to which the spectra of the received light and the second known spectra are similar. (Emphasis added).

For at least reasons similar to those set forth above in the arguments for allowance of pending claim 1, Applicant respectfully asserts that *Johnson* fails to disclose at least the features of claim 34 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 34 should be withdrawn.

Claim 45

Claim 45 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Johnson*. Claim 45 presently reads as follows:

45. A spectral correlation method, comprising the steps of:
receiving light from a specimen;
separating the light into its component colors;
filtering the separated light with a spatial filter indicative of a known spectra corresponding to at least one substance such that a spectra of the separated light is optically multiplied depending on a similarity between the spectra of the separated light and the known spectra;
determining whether the at least one substance is present in the specimen based on the filtered spectra; and
providing an indication as to whether the at least one substance is present in the specimen based on the determining step. (Emphasis added).

For at least reasons similar to those set forth above in the arguments for allowance of claim 18, Applicant respectfully asserts that *Johnson* fails to disclose at least the features of claim 45

highlighted hereinabove. Accordingly, Applicant requests that the 35 U.S.C. §102 rejection of claim 45 be withdrawn.

Claim 57

Claim 57 has been newly added via the amendments set forth herein. Applicant submits that the pending dependent claim 57 contains all features of its independent claim 34. Since claim 34 should be allowed, as argued hereinabove, pending dependent claim 57 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Allowable Subject Matter

Claims 4-17, 21-26, 28-33, 46-48, 52, and 53 have been indicated as allowable by the outstanding Office Action if such claims are rewritten to include the limitations of their respective base claims. Accordingly, pending claims 4, 21, 46, 52, and 53 have been amended herein to include the features of their respective base claims, and Applicant respectfully requests that the objections to these claims be withdrawn. Further, each of the claims 5-17, 22-26, 28-33, 47, and 48 depend from a respective one of the allowable claims 4, 21, or 46. Accordingly, claims 5-17, 22-26, 28-33, 47, and 48, in their present form, are allowable as a matter of law. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

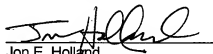
CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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& RISLEY, L.L.P.**

By:

A handwritten signature in black ink, appearing to read "Jon E. Holland", is written over a horizontal line.

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